

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLARD L. SLOAN, EUGENE J.
WINNINGHAM, BOB L. BERTRAM,
JAMES L. KELLEY, on behalf of
themselves and a similarly situated class,

Plaintiffs,

Case No. 09-cv-10918
Hon. Paul D. Borman
Magistrate Mona K. Majzoub

v.

Class Action

BORGWARNER, INC., BORGWARNER
FLEXIBLE BENEFITS PLANS and
BORGWARNER DIVERSIFIED
TRANSMISSION PRODUCTS, INC.,

Defendants.

David R. Radtke (P47016)
Roger J. McClow (P27170)
Patrick J. Rorai (P65091)
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**PLAINTIFFS' MOTION TO WITHDRAW BOB L. BERTRAM
AS A NAMED PLAINTIFF AND MAINTAIN HIS STATUS AS A CLASS MEMBER**

Plaintiffs, by their undersigned attorneys, on behalf of themselves and the certified class, move to withdraw Bob L. Bertram as a Named Plaintiff in this matter while maintaining his status as a Class Member. In support of its Motion, Plaintiffs state as follows:

1. On March 11, 2009, Plaintiffs Willard L. Sloan, Eugene J. Winningham, Bob L. Bertram and James L. Kelley brought this action on behalf of themselves and a class of persons similarly situated alleging the Defendants unlawfully reduced their healthcare benefits in breach of collective bargaining agreements under §301 of the labor Management Relations Act (“LMRA”) 29 U.S.C. §185 and in violation of an employee welfare benefit plan under §302 of ERISA, 29 U.S.C. §1132. (See Dkt. #1)

2. Since commencement of the action, Plaintiff Bertram’s health has been steadily declining due to a serious heart condition, uncontrollable anemia and extreme physical pain. (See Ex. 1, Affidavit of Bob L. Bertram)

3. On February 3, 2009, this Court acknowledged Mr. Bertram’s declining health when it found Bertram to be an inadequate class representative in its Opinion and Order certifying this case as a class action and naming the three other named Plaintiffs as class representatives. (See Dkt. #56, p. 7 (citing Dkt. #41, Ex. 3, Bertram’s 2006 Deposition testimony that he was in “bad health”, “can’t hardly handle” traveling long distances, and was “not able to” serve as a class representative.))

4. Although the Court determined that, because of his declining health, Mr. Bertram was unable to adequately serve as a Class Representative under FRCP 23, he remains an individually named Plaintiff.

5. On September 1, 2011, Defendants noticed the deposition of Mr. Bertram to be held at Plaintiffs’ counsel’s office: over 500 miles from Mr. Bertram’s home and subsequently refused to make any accommodations for a location requiring less travel. (See Ex. 2)

6. Mr. Bertram, at the recommendation of his doctor, does not wish to put himself through the physical pain of travel for this deposition (and possibly again for trial) or remove himself from the proximity of the doctors treating him for his multiple health conditions. (See Ex.1, ¶6)

7. On September 8, 2011, Plaintiffs' counsel notified defense counsel that due to Mr. Bertram's serious illness, he wished to withdraw as an individual Plaintiff so as to avoid the burden of participating in Defendants' deposition and future litigation.

8. On September 9, 2011, counsel for Defendants rejected Plaintiffs' request to withdraw Bertram as a named Plaintiff and demanded that Bertram voluntarily dismiss his claims with prejudice if he desire to avoid another deposition.

9. On September 12, 2011, Plaintiffs' counsel again requested that Defendants stipulate to the withdrawal of Mr. Bertram as a named Plaintiff in this matter. (See Ex. 3)

10. On September 16, 2011, defense counsel again refused Plaintiffs' request and again issued the ultimatum that Mr. Bertram either dismiss his claims against Defendants with prejudice or make himself available for a deposition. (See Ex. 4)

11. A voluntary dismissal with prejudice will have the affect of removing Mr. Bertram as a class member while waiving any interest he has in the outcome of this class action – an extremely harsh result .

12. The fact that Mr. Bertram's health prevents him from participating as an active party, does not affect his interests in the outcome of this case or his willingness to remain a class member. (See Ex. 1, ¶11)

13. Mr. Bertram, in fact, wishes to remain a class member and should not be forced to abandon his claims as a Class Member because he is physically unable to submit to Defendants' demands for his deposition.

14. Plaintiffs requested consent in the relief sought in this Motion and was denied by Defendants on the numerous occasions cited above, making this Motion necessary.

WHEREFORE, Plaintiffs respectfully request that the Court grant this Motion and order the withdrawal of Bob L. Bertram as a named Plaintiff in this matter while maintaining his status as a member of the class.

Respectfully submitted,

KLIMIST, McKNIGHT, SALE
McCLOW & CANZANO, P.C.

By: /s/ Patrick J. Rorai

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Dated: October 14, 2011

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO WITHDRAW
BOB L. BERTRAM AS AN INDIVIDUALLY NAMED PLAINTIFF**

For the reasons stated in the Motion, Plaintiffs respectfully request that the Court grant this Motion and order the withdrawal of Bob L. Bertram as an individually named Plaintiff in this matter while maintaining his status as a member of the class.

Respectfully submitted,

KLIMIST, McKNIGHT, SALE
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Dated: October 14, 2011

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Bobby R. Burchfield
Joshua D. Rogaczewski
Elisa Angeli Palizzi (P52088)

Respectfully submitted,

KLIMIST, McKNIGHT, SALE
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